

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF NEW YORK

3
4 ROBERT BARTLETT, et al., Docket No.
19-CV-00007-CBA-TAM

5 Plaintiffs,

6 v.

Brooklyn, New York
Monday, December 13, 2021
10:26 a.m.

7 SOCIETE GENERALE DE BANQUE
8 AU LIBAN SAL, et al.,

9 Defendants.

10 *REVISED* TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE
11 BEFORE THE HONORABLE TARYN A. MERKL
UNITED STATES MAGISTRATE JUDGE

12
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1 P R O C E E D I N G S

2 THE COURT: Good morning. Ms. Chen (ph.), could
3 you call the case, please?

4 THE CLERK: This is civil cause for a status
5 conference, docket 19-cv-7, Bartlett, et al. versus Societe
6 Generale de Banque au Liban SAL, et al.

7 Before asking the parties to state their
8 appearance, I would like to note the following. Persons
9 granted remote access to proceedings are reminded of the
10 general prohibition against photographing, recording, and
11 rebroadcasting of court proceedings. Violations of these
12 prohibitions may result in sanctions, including removal of
13 court-issued media credentials, restricted entry to future
14 hearings, denial of entry to future hearings, or any other
15 sanctions deemed necessary by the court.

16 Will the parties please state their appearances for
17 the record, starting with the Plaintiffs?

18 MR. OSEN: Good morning, Your Honor. This is Gary
19 Osen of Osen, LLC, on behalf of the Plaintiffs. And I'm
20 joined this morning by my colleagues Tab Turner, Ari Ungar,
21 Michael Radine, Dina Gielchinsky, and Aaron Schlanger.

22 THE COURT: Good morning to you all.

23 And on behalf of Societe Generale?

24 MR. SULLIVAN: Yes. Good morning, Your Honor.
25 Michael Sullivan and Brian Leske from the Ashcroft Firm.

1 THE COURT: Okay. Good morning.

2 And for Fransabank?

3 MS. GOLDSTEIN: For Fransabank, Linda Goldstein,
4 Michael McGinley, and Tamer Mallat of Dechert.

5 THE COURT: Okay. And do you represent anybody
6 else, Ms. Goldstein?

7 MS. GOLDSTEIN: Yes. We also represent BLOM Bank.

8 THE COURT: Okay. Thank you. And there's so many
9 Defendants. I'm not sure. We'll go through the whole list.
10 So if you could please state -- when I call your first bank,
11 let me know who's here on behalf of that party and if you're
12 representing anybody else. I'd appreciate that as well.

13 Middle East Africa Bank?

14 MR. BERGER: Good morning, Your Honor. It's
15 Mitchell Berger from Squire Patton Boggs. Also here with my
16 colleagues Gassan Baloul, Joseph Alonzo, and David Lizmi. We
17 also represent Defendants Fenicia Bank and Lebanon and Gulf
18 Bank.

19 THE COURT: Okay. Thank you for that. And I would
20 just as a housekeeping note advise Mr. Lizmi that your
21 address on ECF has been coming up as the U.S. Attorney's
22 Office. So you should probably get that corrected when you
23 have a moment.

24 All right. So who is next. Bank of Beirut?

25 MR. ANHANG: Good morning, Your Honor. This is

1 George Anhang with the law firm of Shearman & Sterling. And
2 I'm joined today by my colleague Susan Loeb.

3 THE COURT: And are you representing anybody else,
4 sir?

5 MR. ANHANG: No. We are not.

6 THE COURT: Okay. Thank you.

7 And Banque Libano-Francaise?

8 MR. HANCHET: Good morning, Your Honor. This is
9 Mark Hanchet of Mayer Brown. With me is Robert Hamburg. And
10 that's the only bank that we represent.

11 THE COURT: Thank you.

12 And then Bank Audi SAL?

13 MR. LAKATOS: Good morning, Your Honor. This is
14 Alex Lakatos with Mayer Brown. And that's the only bank that
15 we are representing.

16 THE COURT: Okay. Thank you.

17 Is anybody here on behalf of Jammal Trust Bank? I
18 know they're part of our operative discovery schedule, but we
19 did have a couple folks with us last time from that bank. Is
20 there anybody here for Jammal Trust Bank? Okay.

21 And I believe that would also be true, then, for
22 Dr. Muhammad Baasiri.

23 So is there anybody else who has not yet made their
24 appearance?

25 MR. SIEGFRIED: Yes, Your Honor. Jonathan

1 Siegfried on behalf of Byblos Bank and Bank of Beirut.

2 THE COURT: What was the first bank, sir?

3 MR. SIEGFRIED: Byblos Bank.

4 THE COURT: Okay. Could you spell your last name
5 for me, sir? The docket is so large, I'm not finding you
6 quickly, unfortunately.

7 MR. SIEGFRIED: Sure. Sure. S-I-E-G-F-R-I-E-D.

8 THE COURT: Okay. Thank you. It's so hard on the
9 phone to hear all these names and find them quickly and make
10 sure we're squared away docket wise. Okay. All right. I
11 see your bank. I see you here. So thank you for spelling
12 your last name, sir.

13 With that, anybody else who has not yet entered
14 their appearance?

15 All right. So we're here today for a status
16 conference on the discovery schedule. I appreciated the
17 parties' submission. So thank you for that, Mr. Osen.

18 If you could give me an update, sir, on the
19 conferences that you guys have been having to try to discuss
20 how to move forward with at least the limited discovery that
21 was ordered at the last status and where the parties are in
22 these conversations and their plans. I'd like to start with
23 you, Mr. Osen.

24 MR. OSEN: Yes. Good morning again, Your Honor.
25 Thank you.

1 So as our letter indicated, the parties did hold
2 their Rule 26(f) conference on November 5th. And we
3 exchanged several proposals and had two subsequent
4 conferences to discuss the issues that we couldn't reach
5 agreement on.

6 With the Court's indulgence, I think it would
7 probably benefit the discussion if I provided a little bit of
8 background and context beyond the schedule itself since the
9 case itself and the legal issues presented are certainly not
10 run-of-the-mill in any sense.

11 So with the Court's indulgence, I'd just start by
12 sort of reiterating that the elements of a JASTA aiding and
13 abetting claim, which is the central claim here, requires the
14 Plaintiffs to prove that each Defendant was, quote, generally
15 aware of its role in an overall illegal activity from which
16 acts of international terrorism was a foreseeable risk.

17 And so in short, scienter, each Defendant's general
18 awareness of a role in an overall illegal activity, in this
19 case laundering money for Hezbollah, is likely to be the key
20 evidentiary issue in the case, as it is in most JASTA cases.

21 Now, as we discussed in the last call, Your Honor,
22 the central discovery issue sort of looming in this case is
23 Defendant's announced intention to object to discovery from
24 Lebanon on the basis of Lebanon's bank secrecy laws. And
25 though Defendant has not yet specified the precise contours

1 of their objections, it's safe to assume that nearly all of
2 the most relevant records the Plaintiffs will seek in this
3 case from these banks, at least from Lebanon, will be covered
4 by those bank secrecy objections.

5 And these include, for example, account opening
6 records for alleged Hezbollah-affiliated customers, know your
7 customer due diligence files on those entities or
8 individuals, transactional records involving Hezbollah or
9 alleged Hezbollah-affiliated persons and entities, and, of
10 course, internal bank communications about those customers
11 and counterparties and so forth.

12 So this brings us to the question of how the Court
13 will ultimately address and resolve objections to discovery
14 based on foreign law. And when courts do that, when they're
15 evaluating a motion to compel or protective order implicating
16 discovery of documents and testimony in the face of
17 objections based on foreign law, the sort of bedrock case
18 that applies here is a Supreme Court case called
19 *Aerospatiale*. And that case from 1987 lays out sort of the
20 elements under the Restatement (Third) of Foreign Relations
21 Section 442.

22 And among the elements that the court is supposed
23 to consider are the importance to the litigation of the
24 documents or other information requested, the degree of
25 specificity of the request, whether the information

1 originated in the United States, and, importantly for our
2 discussion this morning, the availability of alternative
3 means of securing information apart from the discovery in a
4 foreign jurisdiction. And lastly, for now, the sort of most
5 important element, of course, is the extent which
6 noncompliance with the request would undermine important U.S.
7 interests or compliance with the request would undermine the
8 foreign state's interests, which is basically an evaluation
9 of the balance of national interests in the dispute.

10 So that's sort of the context in which this whole
11 discovery issue is framed. And if Your Honor permits, I'll
12 sort of just go through what the parties have agreed upon and
13 then go to the issues upon which they haven't agreed.

14 THE COURT: I think that makes sense. And I
15 appreciate the background information. This certainly is
16 not, as you point, the average case. So please continue.

17 MR. OSEN: Thank you, Your Honor. So the
18 Defendants obviously are unlikely to be producing any
19 meaningful records over the next 12 months or more. And so
20 the parties have mutually agreed that there's no immediate
21 need to exchange Rule 26 disclosures at this time. So that's
22 one point of agreement.

23 The parties also agree that the resolution of the
24 bank secrecy issue should begin by the Plaintiffs serving
25 initial requests for production which will help the

1 Defendants and ultimately the Court assess the restatement
2 442 factors, including, you know, how important the discovery
3 is, how narrow or necessary it is, et cetera. So that we
4 agree upon.

5 And that leads to the question of what happens, you
6 know, once we've served a request for production and the
7 parties agree that that would be followed by objections and
8 briefing on the issue. And then, depending on what the
9 Court's determination is, in other words, whether it orders a
10 document production order and overrules bank secrecy
11 objections, then the Defendant would be afforded an
12 opportunity to seek permission to comply with the Court's
13 order or orders from the Lebanese authorities through letters
14 rogatory.

15 So in sum, the parties, with the exception of JTB,
16 of course, agree as to the broad outlines of the process.
17 I'll just note that the process we just outlined and that's
18 set forth in our joint letter is the first of a two-step
19 process to the extent that the Court ultimately overrules
20 foreign bank secrecy objections and the Defendant
21 nevertheless refuses to produce documents and can't obtain
22 consent from Lebanon to do so. At the end of the road
23 there's a second briefing process to determine what the
24 Plaintiff's remedy is for the noncompliance with discovery.
25 But that's far down the road.

1 So that just sort of frames the sort of overall
2 structure of the issue. But I don't think we have to go
3 further on something that's certainly a year or more down the
4 road. But I think it's important to recognize that it's a
5 long process.

6 So this brings me briefly to the three areas, from
7 our perspective, of disagreement. And I'll list them briefly
8 and then can return to them substantively.

9 So the first is that the Defendants want the Court
10 to compel Plaintiffs to complete the service of third-party
11 discovery of New York correspondent banks in the next few
12 weeks. And the Plaintiffs object to any sort of timing
13 limitation on when they must initiate third-party discovery
14 at the very infancy of discovery in this case from our point
15 of view.

16 The second is that in the event that the Court
17 overrules Lebanese bank secrecy objections and the Defendant
18 seeks permission to comply with the court orders from
19 Lebanese authorities through letters rogatory, Plaintiffs
20 really want to set an end date by which the Defendants have
21 to actually give a final position on whether they'll comply
22 with the Court's orders. The Defendants want to set a date
23 to report on the progress of their letters rogatory but
24 haven't agreed to set any end date for taking a final
25 position on whether they'll comply with the Court's order.

1 And the third issue, which I think in some respects
2 is the least important, the parties are not greatly apart on
3 the bulk of the schedule, as you can see from the joint
4 letter. But as we're happy to elaborate, some of the dates
5 Defendant proposes -- Defendants propose, I should
6 say -- simply interpose from our viewpoint unnecessary long
7 gaps in the schedule.

8 So those are the three, I think, main issues that
9 are still in dispute. And I'm happy to take them up in more
10 detail. But I'll pause here in case the Court has questions.

11 THE COURT: No. I think that's a very helpful
12 overview, and it certainly helps to supplement this chart
13 that I'm looking at in this December 12th letter. So I
14 appreciate the backstory as to how this chart was generated
15 and the reasons for the structure that the parties have
16 proposed.

17 If you have nothing further to add about framing
18 the issues, I'd like to ask who's speaking on -- taking the
19 lead on behalf of the Defendants today. Is that going to be
20 you --

21 MR. BERGER: Good morning.

22 THE COURT: -- again, Ms. Goldstein, or is it
23 somebody else?

24 MR. BERGER: I think this morning, Your Honor, it's
25 going to be me, Mitchell Berger, from Squire Patton Boggs,

1 although Ms. Goldstein has got things that she can say as
2 well. But in terms of where Mr. Osen started, perhaps it
3 makes sense for me to start.

4 THE COURT: Okay. Very good. Thank you. And
5 thank you for coordinating amongst yourselves on these
6 issues. As you know, these can be very burdensome. So I
7 appreciate the pre-coordination that you all did.

8 MR. BERGER: Absolutely. Thank you, Your Honor.
9 Let me start where I thought Mr. Osen might start, which is
10 while we all agree that bank secrecy objections are going to
11 play a role in discovery, we're not exactly writing on a
12 clean slate. Both the Eastern District and the Second
13 Circuit have been through this process before in the case of
14 Linde v. Arab Bank where the Second Circuit decision can be
15 found at 706 F.3d 92, 2013.

16 And it is the Linde decision and the way that both
17 the Eastern District and the Second Circuit approached the
18 issue that drive the schedule that you have from our side on
19 behalf of the moving Defendants. And it accounts for the
20 differences between Plaintiffs' proposed schedule and our
21 proposed schedule. So let me just elaborate on that for a
22 bit, if I might, without meaning to accept some of the things
23 that Mr. Osen said earlier, such as his description of the
24 elements of a JASTA claim where we clearly do have
25 disagreements.

1 But here's what we knows. And it explains both the
2 front end and the back end of our schedule, which is what we
3 know from Linde is that the international comity test that I
4 applied to bank secrecy requires several things, some of
5 which Mr. Osen touched on. One is specificity. So the first
6 thing from the moving Defendants' side is we said we need to
7 know much more generally than the sort of ticking off the
8 boxes that Mr. Osen did of account opening records, know your
9 customer, et cetera. We need to know what your requests are.
10 So first order of business is to get requests out at a
11 reasonable time and account for the process that Defendants'
12 counsel have then applied to the requests.

13 One of the other things international comity test
14 looks at is alternative means for obtaining the information,
15 as Mr. Osen said. So one of the reasons why we have frankly
16 insisted that the Plaintiffs do what Your Honor allowed them
17 to do two months ago, which is to get on with the show of
18 subpoenaing third-party correspondent banks of these moving
19 Defendants to see what they can get from those banks because
20 that's going to inform the element of alternative means for
21 obtaining the same information, which is also part of the
22 international comity test.

23 The third part of this is that inevitably we will,
24 after having objected to the request on bank secrecy, we will
25 also be objecting on other grounds, which is relevance,

1 proportionality, need, scope of discovery. And that too is
2 part of the international comity test, all of which is
3 reviewed in Linde.

4 So what we have proposed -- and these are the areas
5 of similarity with the Plaintiffs -- requests, objections and
6 responses, meet and confer, discovery motions. But where we
7 disagree is at the back end. And I counted up three times
8 that Mr. Osen said if the Court overrules bank secrecy
9 objections.

10 Now, we know from Linde that that, in fact, is not
11 the right process to use. What Linde tells us -- and I'm
12 happy to give Your Honor cites to some of the earlier
13 decisions out of the FRD in the Linde case, which probably
14 spilled more ink than most cases. But the way it goes is
15 after the court considers motions to compel or motions for
16 protective order and has limited appropriately the scope of
17 the requests, determine what's important or not, it then
18 affords the defendants an opportunity to issue -- ask the
19 court to issue letters rogatory to the Lebanese authority
20 that ask for waiver of bank secrecy laws and permission to
21 disclose the documents that are responsive to plaintiff's
22 requests as narrowed by the court.

23 Now, I didn't make up that language. You can find
24 it in the Linde decision at 229 F.R.D. 194, namely that
25 before the court considers overruling bank secrecy

1 objections, it affords that opportunity to seek a waiver.

2 Then, once the letters rogatory are responded to by
3 the Lebanese authorities, we come back to court. We say,
4 okay, here's the upshot. The Lebanese authorities did or did
5 not give permission or they granted it in part. And then we
6 litigate the issue. And then and only then does the Court
7 make the determination to quote/unquote overrule bank secrecy
8 objections if it believes that that is appropriate.

9 Again, I didn't make that up. Your Honor can see
10 that in the Linde decision at 269 F.R.D. 193 where the
11 District Court notes that the plaintiffs asked the magistrate
12 judge "to overrule defendant's foreign bank secrecy
13 objections." But what in fact happened was that the
14 defendants were allowed to issue letters rogatory.

15 So that accounts for the difference at the back end
16 of our schedule, which is once we issue letters rogatory
17 seeking permission from the Lebanese authorities to disclose
18 documents that are the subject of a court's order narrowing
19 Plaintiffs' requests, we will come back and advise the Court.

20 What Plaintiffs want to do is impose an artificial
21 and frankly premature deadline on when we have to put up or
22 shut up, to use a common term. And we won't know that. How
23 can we possibly know at this stage how long it will take for
24 the Lebanese authorities, given all that is going on in
25 Lebanon and the complexity of these issues.

1 Certainly we believe we have to keep the Court
2 informed. Our schedule proposes giving the Lebanese
3 authorities 90 days before we come back to the Court and say
4 here's where things stand and here's what the Defendants
5 think makes sense. Of course, the Plaintiffs will tell the
6 Court what they think makes sense. But to impose in the
7 abstract and in advance a hard and fast deadline to say we're
8 going to produce or not produce really doesn't take account
9 of the importance of foreign bank secrecy laws, which, as the
10 Linde decision and the Aerospatiale decision that Mr. Osen
11 mentioned say it's important. You have to give it weight.

12 Well, how are you going to give it weight if you
13 say artificially and in advance you've got 90 days to get
14 that process done? So all we're suggesting at the back end
15 is that we come back to the Court after 90 days and say
16 here's where we stand.

17 Frankly, other than those differences, at the front
18 end where we say they ought to do what Your Honor told them
19 to do and issue their subpoenas and that bears on the
20 alternative means inquiry. And at the back end, where we say
21 there should not be an artificial deadline for deciding that
22 there will be compliance or noncompliance, the schedules are
23 largely the same.

24 The timing differences are that Plaintiffs have
25 proposed issuing their requests for production on December

1 20th and giving us 65 days to respond. Ours is entirely sort
2 of a real world response, which is to say the time between
3 December 20th and January 3rd is wasted time. Not for the
4 lawyers. We're always happy to work. But it will be
5 difficult, if not impossible, to get the clients to give us
6 the feedback we need on what they have and don't have that is
7 responsive to the requests. So we have simply suggested that
8 the RFP process start after the holidays and, importantly,
9 after the Plaintiffs get seriously underway with their
10 third-party subpoena discovery.

11 And when I say seriously underway -- and this is
12 the last point I'll make -- is that Your Honor authorized
13 them on October 8th to proceed with these third-party
14 subpoenas. There were 13 preservation subpoenas they wanted
15 to convert into production subpoenas. They have issued to
16 date four subpoenas.

17 We think if they meant what they said to Your Honor
18 on October 8th that this was important and they needed to get
19 underway, then, frankly, they should be subject to a
20 substantial completion deadline. When we proposed that, they
21 rejected it. We said, okay, alternatively, at least get to
22 the end of the beginning and get all of your subpoenas out by
23 January 10. And then serve your requests on the parties on
24 January 17th.

25 I'll pause there. If Your Honor has questions,

1 happy to answer them.

2 THE COURT: No. Thank you. That's very helpful.

3 Is there any other party for the Defendants who
4 would like to add what Mr. Mitchell said before I go back to
5 Mr. Osen?

6 MS. GOLDSTEIN: Your Honor, this is Linda
7 Goldstein. I'm prepared to go into a little bit more detail
8 to give you background on the issue of third-party subpoenas
9 if that would be helpful.

10 THE COURT: Sure. That was what I was going to go
11 back to Mr. Osen about, to ask him the plans with regard to
12 the third-party subpoenas and what's happening. But if you
13 have additional context, I'll be happy to hear.

14 MS. GOLDSTEIN: Sure.

15 THE COURT: Then I'll go back to Mr. Osen in a
16 moment.

17 MS. GOLDSTEIN: Sure. Sure. Well, to build on
18 what Mr. Berger started with, there were actually, I believe,
19 15 preservation subpoenas that went out in early 2021. And
20 these included four banks that I'll call the big four because
21 each of them is alleged to have been a correspondent to
22 multiple Defendants. So these big four include Standard
23 Chartered Bank, which is alleged to have correspondent
24 accounts for 13 of the Defendants. Bank of New York, which
25 is alleged to have had accounts for 12 Defendants. JPMorgan,

1 nine Defendants. And Wells Fargo, eight Defendants.

2 As the Court will recall, the last conference that
3 we had on October 8th was triggered by a letter that
4 Plaintiffs' counsel sent to the Court seeking leave to serve
5 production subpoenas on the 15 banks that had already
6 received preservation subpoenas as well as any other
7 similarly situated banks.

8 At the October 8th hearing, this Court held that
9 the third-party discovery on these banks could begin before
10 resolution of the motion to dismiss. And a large part of the
11 Court's reasoning was that such discovery would impose little
12 burden on the Defendants.

13 Since then, as Mr. Berger noted, the Plaintiffs
14 have served a total of four production subpoenas, three on
15 some of the banks that received preservation subpoenas, but
16 served BNP Paribas, KBC, and Mashreq Bank, and one on a new
17 bank -- you know, Arab Bank.

18 Significantly, none of those subpoenas went to the
19 group I've called the big four. In terms of our discussions
20 with Plaintiffs at the various meet and confers, we initially
21 sought to have this third-party discovery completed before
22 the commencement of party discovery. That approach was
23 rejected. We're now seeking, as Mr. Berger said, simply that
24 this discovery be put on track and not deferred indefinitely,
25 in part because of the significance of the availability of

1 other sources of information for the comity analysis involved
2 and the bank secrecy issue. And then partly, frankly,
3 because production from those banks could result in more
4 targeted requests to the Defendants or could have an impact
5 on any scope disputes that the parties may have on motions to
6 compel.

7 So just to be clear, we're not seeking that
8 third-party discovery be completed by any particular date.
9 We're simply asking that the process, which was initiated
10 through preservation subpoenas, be put back on track so that
11 it's going on at least concomitantly with party discovery.

12 THE COURT: All right. Anybody else on behalf of
13 the Defendants?

14 All right. Going back to you, Mr. Osen. Could you
15 shed a little bit more light on this third-party discovery
16 issue? I'd like to try to figure out a path forward there.
17 And then we can discuss the balance of the schedule. So Mr.
18 Osen?

19 MR. OSEN: Yes, Your Honor. Thank you. So first
20 of all, let's start by going back to why the Plaintiffs
21 sought third-party discovery in the first place, which is
22 that the Defendants arrogated to themselves a stay of
23 discovery after the Court rejected it in a minute order this
24 past summer.

25 We attempted to initiate a 26(f) conference, which

1 the Defendants declined to participate in. And so as an
2 alternative to proceeding with discovery as we believed we
3 were entitled to, we sought an alternative avenue of
4 proceeding with third-party discovery which would not
5 directly affect any burden on the Defendants.

6 The description of what has transpired is true or
7 accurate, I should say, in most regards, but it leaves out
8 some of the context. First of all, we served third-party
9 subpoenas from our standpoint in a strategic way to not sort
10 of blast out a mass discovery effort that would likely result
11 in significant motion practice and potentially involve the
12 Court in motions to quash and so forth. We tried to take an
13 incremental approach by starting with narrower discovery of
14 banks that were likely to have some but not necessarily
15 voluminous amounts of responsive materials so that we could
16 evaluate those productions and then proceed from there,
17 depending on what the volume was.

18 When we were talking about discovery of or
19 third-party subpoenas to use Ms. Goldstein's term the big
20 four banks, we were talking about either asking the
21 Defendants -- I'm sorry, the four banks or others to produce
22 records from -- their correspondent bank records for those
23 Defendant correspondent accounts or, in the alternative, for
24 a long list of Hezbollah-affiliated entities. And of course,
25 there are numerous spelling variations when we're dealing

1 with Arabic names transliterated into English.

2 So that process invariably -- even now with one of
3 our subpoenas to BNP Paribas, they've raised objections to a
4 much smaller list because of the scope of it and their
5 perceived burden in searching for that amount of names. That
6 would, of course, be increased considerably if we began with
7 the same kind of sweeping third-party subpoenas here.

8 But I think that's the thought process in terms of
9 our assessment and how we've proceeded. But I think it's
10 also important to remember that there's nothing whatsoever
11 preventing the Defendants from asking their own correspondent
12 banks, which as Ms. Goldstein points out, covers 13 banks for
13 SCB, 12 for Bank of New York, et cetera. There's nothing
14 preventing them from requesting New York correspondent banks
15 to give them copies of their own transactional records.

16 And there's nothing preventing the Defendants from
17 serving their own subpoenas on other New York correspondent
18 banks to give them copies of transactional records involving
19 the Defendants and transactions which will be identified in
20 the Plaintiffs' request for production.

21 That's not to say they have to do that. But to the
22 extent that they want that information in order to improve or
23 bolster a future motion or briefing that they potentially
24 will file that we have not seen and the Court has not seen is
25 not a legitimate basis for setting a artificial and arbitrary

1 deadline on how we proceed with discovery. In other words,
2 from our standpoint --

3 THE COURT: Listen, Mr. Osen, to be fair --

4 MR. OSEN: Yes.

5 THE COURT: -- I do not hear the Defendants
6 advocating for a strict deadline for these third-party
7 subpoenas. I heard them asking me to try to get that process
8 going so that the parties have a sense of the scope of
9 discovery and will be able to make a determination at a later
10 date about the availability or potential availability of the
11 records to the extent it becomes relevant later in an
12 analysis regarding the letters rogatory.

13 So the deadline is a red herring. Don't focus on
14 it. I think my real question is what are your intentions
15 with regard to these third-party subpoenas, and can we get
16 that process on track?

17 MR. OSEN: Well, Your Honor, first of all, the
18 Defendants, of course, do want to set a deadline for when we
19 serve third-party subpoenas. So I think that's the real
20 essence of the dispute. We have no dispute with the question
21 of pursuing third-party discovery. We're doing so now. In
22 fact, we anticipate this week receiving a reasonably sizeable
23 production from one of the third-party subpoena recipients,
24 which we in the ordinary course would evaluate, see what kind
25 of transaction records are being produced. We'd continue our

1 discussions with BNP Paribas so we learn the sort of scope of
2 what the larger banks will and will not agree to and whether
3 there are workarounds and compromises that get us what we're
4 looking for.

5 And then by all means, from our standpoint, we of
6 course want to collect as much material as we can from each
7 of the banks and maybe even some that we didn't serve
8 preservation subpoenas to.

9 So it's not a standpoint for us that we don't want
10 to pursue the discovery. It's simply that we want to do it
11 in a staged way in which we can do it evaluating the
12 materials we get, learning from our interactions with various
13 banks so that we do it in a way that we view as efficient and
14 which doesn't provoke motion practice to the court which is
15 unnecessary.

16 THE COURT: I hear you in terms of how that would
17 be a nice process, but I do wonder how much time you're
18 anticipating this will all take. The proposal that the
19 parties have given me is anticipating, you know, motion to
20 compel briefings in April and May. And, you know, the staged
21 process that you're describing, given the length of time that
22 it takes banks to respond to even small subpoenas, much less
23 voluminous subpoenas, strikes me as not consistent with your
24 strategy of doing this in a staged manner.

25 So I think what I'm sort of struggling with is this

1 whole process of opening the sort of gates to do the
2 third-party subpoena work and start to sort of do discovery
3 in a manner that makes sense in light of the motion to
4 dismiss and the possibility that the claims in this case are
5 going to be significantly narrowed following the motion to
6 dismiss.

7 The struggle that I'm having is that this was all
8 started because of your claimed desire to issue these
9 third-party subpoenas. And I get it that you don't want to
10 get 3 million documents back in a week. I completely get
11 that.

12 But it leaves the Court sort of at a loss as to how
13 to schedule the discovery in a manner that is realistic and
14 also actually gets things moving and done, which was your
15 original request, sir.

16 MR. OSEN: Right. And we don't disagree with any
17 of that. I think where we disagree with the Defendants, Your
18 Honor, is that we don't think there's any relevance
19 whatsoever to our third-party discovery as it relates to or
20 is in any way contingent to the briefing process for
21 objections and bank secrecy. In other words, we will serve
22 requests for production which will have the full scope of the
23 entities and persons that we are interested in and think are
24 relevant to the claims and defenses in this case. They'll
25 have that universe when we serve that RFP.

1 And then they will proceed to object, whether it's
2 on relevance, burden, or foreign bank secrecy. And that
3 process goes ahead. And if they want to raise an issue such
4 as availability of particular records, they're certainly
5 free, as I said, to initiate the production from third
6 parties if it thinks it will help their briefing. But that's
7 not our job. Our job is just to proceed with discovery on
8 our end.

9 And so it's the coupling of those two issues that
10 is, I think, the area where we completely disagree with the
11 Defendants. Moreover, you know, I don't want to gloss over
12 the fact Mr. Berger said that there's a particular procedure
13 set forth in the Second Circuit's decision in Linde. You
14 know, don't want this to come out the wrong way, but we were
15 counsel in that case and spent 10 years in litigation on the
16 bank secrecy issue in that case. And his procedural summary
17 of it is not accurate.

18 That being said, in a case that went on for 10
19 years, I don't blame Mr. Berger for not knowing the ins and
20 outs of how that particular discovery dispute unfolded.
21 However --

22 THE COURT: I believe it was Mr. Mitchell just for
23 clarity of the record.

24 MR. BERGER: It's Mitchell Berger, Your Honor, so
25 I'm happy to go by either one.

1 THE COURT: Oh, I apologize Mr. Berger. I wrote
2 your name down incorrectly on my notes. Okay.

3 MR. BERGER: No. Not that at all. I'd rather have
4 Mr. Osen's apology for saying I misstated the record. I
5 think I'm the only one who provided Your Honor with case
6 cites. But I'll desist and let him finish.

7 THE COURT: Go ahead, Mr. Osen. Sorry about my
8 interruption for an incorrect correction.

9 MR. OSEN: That's all right.

10 THE COURT: Go ahead, Mr. Osen.

11 MR. OSEN: I make many mistakes, so don't worry.
12 The point is that the schedule that we outlined contemplates
13 the Court both assessing the scope and issuing ultimately a
14 production order and reaching an assessment on foreign bank
15 secrecy, which is an initial assessment obviously subject to
16 what the Defendants are able to obtain if the Court agrees
17 with us on the issue initially from the Lebanese authorities.

18 The way that this can work is actually in a
19 multiple number of ways. So in other cases in the EDNY, in
20 Strauss and Weiss, the court took a somewhat different
21 procedural approach. The issue isn't the particulars of it.
22 It's the question of first identifying a reasonable amount of
23 discovery that is tailored to -- that it's important to the
24 location and has a degree of specificity the Court agrees
25 about and then proceeds from there to give the Defendant an

1 opportunity, even if the Court does not agree with the comity
2 assessment to nonetheless seek permission from the foreign
3 authorities to proceed and to waive the objection.

4 Now, this can be done, and we propose to the
5 Defendant as an alternative that they could just start with
6 20 names. And we gave them a sample of 20 names in our
7 discussion where they could start with letters rogatory. And
8 that's, in fact, what we have done in another case in the
9 EDNY that's pending at the moment in Miller v. Arab Bank.

10 So there's not one way in which to do this. But
11 the Defendants want us to serve an RFP and for them to be
12 able to have the full scope of what our initial requests are
13 so that they can challenge the specificity and scope and so
14 forth. And we're fine with that. I want to be clear about
15 that.

16 But that has nothing to do with the question of
17 whether one of the arguments they may raise on bank secrecy
18 would be assisted by our third-party discovery. As I said,
19 nothing prevents them from going to their own banks and
20 asking them for records if they want to show that there are
21 records available to them. And I suspect, but I can't be
22 certain, that a request from a longstanding banking customer
23 may be viewed with less jaundiced eye than a third-party
24 subpoena from Plaintiffs' counsel. I could be wrong about
25 that.

1 But of course we would prefer, in whatever form,
2 that the documents be produced. We just don't want to be
3 driven to do that on any particular schedule that is likely
4 to result in motion practice. It might come down to that
5 anyway, but we'd rather do it according to our own lights.
6 And we don't see that that's tied in any way to the briefing
7 schedule.

8 THE COURT: So back to you, Mr. Berger.

9 MR. BERGER: Yes. Well, let me start with where we
10 all were on October 8th, which was we got this whole process
11 activated and consumed a fair amount of Your Honor's time
12 because Mr. Osen said these subpoenas were important. Well,
13 they haven't exactly voted with their feet in making them
14 important in issuing only four. But more importantly, it
15 does bear on the availability of alternative means under the
16 international comity analysis.

17 When Mr. Osen ticked off in the abstract four areas
18 of documents he would be requesting, one of his was
19 transactional records. Well, what is he seeking from these
20 correspondent banks but transactional records? So indeed,
21 where we stand on the subpoenas will bear directly on the
22 alternative means of obtaining information that he wants for
23 the international comity analysis.

24 And he is right. We rejected the idea of in the
25 abstract taking a list of 20-odd names with nothing more and

1 just then going to the court and saying, Your Honor, will you
2 issue a letter rogatory that asks for goodness knows what
3 with respect to these 20 names. Well, we said we've read the
4 international comity test, whether you read it from
5 Aerospatiale or whether you read it in Linde, and it says you
6 have to have specificity of the request. So we said for good
7 order's sake and to comply with the international comity
8 test, we need specific requests, specific requests of what
9 kinds of documents you want, about whom you want the records,
10 what time period it covers, all the conventional things that
11 one would expect in a request for production of documents.

12 And it's not just because we like doing it that
13 way. It's because there's no other way to apply the
14 international comity test that we're going to have to
15 confront. So despite what Mr. Osen said about having raised
16 that at the beginning, he ultimately seems to have come
17 around to our point of view, as you can see from his letter
18 of Friday, where what we're all proposing is let's do it by
19 the numbers. Requests, objections, meet and confer, motions.

20 The only difference in those schedules for all
21 practical purposes is timing and two wrinkles. And so I'll
22 just touch on those two wrinkles again. One is he says in
23 resolving motions, Your Honor can overrule bank secrecy
24 before we get on with letters rogatory.

25 My first response to that is it's premature. Your

1 Honor hasn't even seen where we stand. We don't need to
2 resolve that issue for today. That certainly wasn't the
3 approach that I quoted to you from the early Linde decisions
4 that are the ones I mentioned earlier that you can find at
5 269 F.R.D. So that's one, which is we don't think that the
6 Court needs to decide that it's overruling bank secrecy and
7 certainly doesn't need to decide today that that's what it
8 needs to do when it has motions to compel or motions for
9 protective order.

10 And the second point where we disagree -- and it's
11 the only point -- is do we have a drop-dead deadline by which
12 we must tell you whether we're producing documents. And I
13 think it's a bit ironic that Mr. Osen has begun his argument
14 by saying we don't want to have an artificial constriction of
15 our rights to pursue discovery. We don't want to live under
16 any kind of deadline for third-party discovery. But when it
17 comes to Defendants, there ought to be some artificial a
18 priori deadline by which they tell the Court that they will
19 produce or not.

20 I'll borrow Mr. Osen's logic and say it's simply
21 too early to know where we will stand 90 days after a letter
22 rogatory gets issued. And therefore, what we're proposing
23 is, rather than a drop-dead deadline, we will come back. We
24 will advise the Court what's going on. And we will follow
25 the Court's directions.

1 THE COURT: All right. Thank you for that.

2 MS. GOLDSTEIN: And so I'd like to add one point.

3 THE COURT: Sorry. I want to ask Mr. Berger a
4 follow-up question.

5 So the issue about, you know, coming back to the
6 court, I completely agree with you, Mr. Berger. I don't
7 think it's realistic at this juncture for us to be setting,
8 you know, deadlines by which you are going to be telling me
9 about your interactions with the Lebanese authority. I think
10 that that's going to need some time to play out.

11 But what I'm still struggling with is this question
12 of how to get this process underway. Mr. Osen,
13 understandably, doesn't want there to be a hard and fast
14 deadline for all third-party correspondent bank subpoenas.
15 And I frankly did not understand either of you to be arguing
16 that. In fact, I believe that Ms. Goldstein expressly said
17 she wasn't arguing that but she wanted to get this
18 substantial compliance or things on track. I may be
19 comingling some of the language the two of you used, but that
20 was my impression of the overall position of the Defendants.

21 So Mr. Berger, can you comment on the sort of
22 kickoff process and the timing there?

23 MR. BERGER: Yes, Your Honor. And I think Ms.
24 Goldstein and I are saying the same things and much because
25 we took a page from Your Honor's book from October 8th, which

1 is our position is we understood loud and clear from your
2 order of October 8th and your follow-up minute order of
3 October 11th that what Your Honor expected was some amount of
4 both sequential and incremental discovery.

5 So what we have proposed is pick whatever dates you
6 want. Let's at least get the third-party discovery underway
7 in a meaningful way before we then grapple with requests for
8 production. Pick whatever dates you want. In the multiple
9 schedules we exchanged, we had suggested later dates for them
10 to complete issuing subpoenas and therefore later dates for
11 us to -- for the parties to issue requests for production.

12 Our only point is in the sort of chicken-egg battle
13 of what should come first, we thought that however Your Honor
14 believes is appropriate they need to do something more than
15 they have done on the third-party discovery front since
16 October 8th. I mean, it's December 13th, and they have four
17 subpoenas outstanding. And given that it will be difficult
18 to get meaningful interaction with the client banks over the
19 holidays, what we're trying to do is make good use of that
20 time by saying, okay, use the next three weeks. Get your
21 subpoenas out.

22 You know, if that's all you want to do for them,
23 then I suppose the moving Defendants can live with that, but
24 do that before you then propound discovery requests because,
25 indeed, we are going to be coming back in discovery motions

1 saying you want transactional records from us, you could have
2 or you did request transactional records from the
3 correspondent banks. That's meaningful. It should go first.
4 That's our position so far as I understand it.

5 THE COURT: Well, what do you make of Mr. Osen's
6 argument that the Defendant banks in some ways are arguably,
7 according to him, better situated to determine the
8 availability of the records from the correspondent banks in
9 the context of making those comity arguments?

10 MR. BERGER: My only response to that would be why
11 didn't I hear that on October 8th when he was here telling
12 Your Honor how vital it was for the Plaintiffs to issue
13 subpoenas? And if what he means is it was only vital to
14 issue the four subpoenas he's issued so far, okay, that's not
15 what I've heard, either in the meet and confers or on this
16 call. But yeah. I mean, we have alternative means as well.

17 But we started this journey with them asking Your
18 Honor to lift the discovery stay or at least to initiate the
19 discovery process and to start with these subpoenas. So we
20 took them at their word that it was important.

21 THE COURT: Which I understand.

22 MS. GOLDSTEIN: If I could add, Your Honor.

23 THE COURT: Yes. Go ahead, Ms. Goldstein.

24 MS. GOLDSTEIN: I have not heard Mr. Osen say that
25 he does not want the transactional records from the

1 correspondent banks. All I hear him saying is that he
2 doesn't want it now if getting it now is going to be helpful
3 to Defendants and eventual motions to compel. And that
4 doesn't really seem to be the most efficient way of
5 proceeding.

6 THE COURT: Okay. Back to you, Mr. Osen. Again, I
7 do hear you on your desire to sort of stage things. But why
8 are -- can we please just sort of figure out a schedule for
9 some substantial compliance with this request to issue these
10 third-party correspondent subpoenas?

11 MR. OSEN: Well, let's start, Your Honor, with the
12 fact that the reason we sought third-party subpoenas is
13 because the Defendants wouldn't engage in any discovery
14 directly or even schedule a Rule 26(f) conference. So that's
15 the background to this.

16 Obviously, we always prefer to get the records
17 directly from the Defendant rather than have to go through
18 third parties for it. So it's no answer to say that, yes,
19 they could get those records, but ha, ha, the Plaintiffs
20 asked for it in a different way. We asked for it in a
21 different way because that was the only option and
22 opportunity we had to open discovery at all.

23 But more importantly, again, the issue is not
24 whether we want the records or even that we want to frustrate
25 the Defendants' ability to make an argument in their eventual

1 briefing. As stated before, they could go to those
2 correspondent banks who they have contractual relationships
3 with and ask for those records. And they could make the same
4 argument that they want to make now. This is just a red
5 herring to distract from the fact that they want to delay as
6 much as possible the briefing of the central issue in this
7 case.

8 And we are not in parallel. We are in the process
9 of engaging in discovery. The Defendants' objection to
10 deadlines is about the withholding of discovery. They are
11 not the same thing, and they are not equivalent in any way.

12 So from our standpoint, we could serve a discovery
13 request next week or sometime before Christmas. They could
14 have the same amount of time that they want on their schedule
15 to respond. And in fact, giving them extra time to consider
16 the particulars of our request.

17 We have certainly no reason to not independently
18 seek third-party discovery and intend to pursue it
19 vigorously. But what we don't want to do -- unless Your
20 Honor directs us. If Your Honor directs us and says, look,
21 just send out those subpoenas to all the banks and see what
22 happens, it's not a big burden on us from a standpoint of
23 drafting and serving the subpoenas. The burden will come in
24 when we are weighed down in the inevitable disputes over
25 those subpoenas and motions to quash, et cetera. That might

1 happen no matter what, but our view is that that is something
2 we should try to avoid where we can and we should proceed in
3 a manner that is incremental and strategic and tries to limit
4 the amount of sort of collateral disputes that are going to
5 be raised.

6 But if the Court says, hey, look, just for the
7 sake of moving things forward, send it out and proceed in
8 that way, we're certainly not going to stand in the way of
9 that. It's not mechanically difficult for us. But I don't
10 think it's going to move the ball any further. It's
11 certainly unlikely that in the briefing schedule the
12 Defendants are going to have any more benefit from the fact
13 that we sent a subpoena out that is being contested when, of
14 course, again, it bears repeating, they can go straight to
15 the horse's mouth. They could ask the banks for the records.
16 And that would be the most direct and efficient way for them
17 to make whatever argument they want to make.

18 I want to stress also, Your Honor, just so we're
19 clear that transactional records are very important to us
20 because they are the actus reus of the crime, if you will, of
21 money laundering for Hezbollah. But the key and central
22 issue in almost every ATA case is the defendant's scienter,
23 what do they know, what's their level of awareness. And that
24 is generally not determined by transactional records but by
25 the internal communication of the banks themselves. Those

1 records are not in United States. They're not held by the
2 correspondent banks. Those are the key records. And that's
3 unaffected by anything we do here when the Court ultimately
4 analyzes the competing interests.

5 THE COURT: All right. So is there anything you'd
6 like to say in response to that, Mr. Berger?

7 MR. BERGER: Only this, Your Honor, and I'm sure
8 you're getting tired of hearing from us, so I'll keep it very
9 short. Which is obviously one of the things Your Honor is
10 going to have to address in discovery motions is
11 proportionality. And it's very difficult to know what's
12 proportional for party discovery -- put aside international
13 comity. Alternative means is certainly important for that.
14 And it's additionally important on the issue of
15 proportionality.

16 And the fact that they are voluntarily disarming
17 and choose not to pursue records that they could pursue I
18 think is going to speak volumes at a later date on
19 proportionality.

20 Last point, I guess, you would never know from what
21 Mr. Osen said that we're, like, three weeks apart on most of
22 the key elements of this. And the only reason we're three
23 weeks apart is we said we'd like you to serve these subpoenas
24 first and we'd like to make sure we use the time efficiently
25 given the holidays.

1 Mr. Osen just solved the second of those problems
2 by saying if I serve next week on the December 20 deadline I
3 propose, you can still have until the March 18 deadline in
4 yours. If that's what he's proposing, then we've reached
5 agreement on that.

6 And then it's really a question of did they mean
7 what they said when they came to Your Honor on October 8th
8 and said this stuff's important.

9 THE COURT: Well, I don't think that the timing is
10 a determinant of whether it's important. And I think both
11 parties are placing a lot of emphasis on what happened in the
12 past. And, you know, frankly, it's of some relevance, but as
13 we all know, litigation is complicated. Investigations are
14 complicated. And things change. People's perspectives
15 change. The number of documents you have to review, you
16 know, can impact whether you feel like subpoenaing another
17 million documents.

18 I would like both of you to please stop putting so
19 much emphasis on how we got here and try to figure out our
20 paths forward because that is ultimately what I am here to
21 do. I am not here to, you know, berate any party for their
22 conduct absent truly, you know, bad conduct. But I am here
23 to try to make this process expeditious and reasonably
24 efficient. And I recognize in a case like this those terms
25 don't really mean much because it's not going to be efficient

1 and it's not going to be quick.

2 But I really would ask both sides -- because you've
3 both been doing it a lot to stop with the jabs about what
4 happened in the past. Okay?

5 Ms. Goldstein, is there anything you'd like to add?

6 MS. GOLDSTEIN: No, Your Honor. Not at this point.

7 THE COURT: Okay. So, you know, having reviewed
8 the parties' proposal and, you know, thank you, all, for your
9 very thorough, you know, discussion today of the different
10 moving parts. I do think, frankly, Mr. Osen, that it makes
11 sense for some of this work to be, you know, on track with
12 regard to these third-party subpoenas.

13 And the reason for that is not necessarily because
14 it relates to the comity analysis, although I do believe that
15 it does. I take your point, Mr. Osen, that the Defendants
16 are able to do a comity evaluation and do their own
17 independent investigation with their correspondent banks as
18 to the comity analysis at the appropriate time, but it
19 doesn't change the fact that, you know, this is a process
20 that you requested. We started it. And I do think we need
21 to keep the case, you know, moving in the direction that you
22 requested it to be moving.

23 So with that, Mr. Osen, you know, realistically,
24 what is the timing that you think would be realistic for
25 serving subpoenas on we'll call it the big four to borrow Ms.

1 Goldstein's term?

2 MR. OSEN: We'd have to check the calendar, Your
3 Honor, but I imagine we could certainly serve them by or
4 before the first week of January. So I think it might be
5 sooner, but that's really just a question of other things
6 going on here. So I think that's an outer date.

7 THE COURT: Okay. I would then like to ask you to
8 serve those subpoenas on the big four by the Defendant's
9 proposed date of January 10th. I am not going to order that
10 that be the last day for the Plaintiffs to serve subpoenas on
11 the correspondent banks. I do agree with Mr. Osen that doing
12 this in a staged way to some degree makes sense. And there's
13 certainly, you know -- the big four subpoenas will be very
14 informative as to the scope of the documents that are out
15 there and the complexity of the responses. And also, to Mr.
16 Osen's point, whether or not this is going to result in a
17 barrage of briefing to kick off the new year together.

18 So we'll set that date as January 10th. And then,
19 Mr. Osen, in addition to that, when would you be able to
20 serve your RFPs to the Defendant?

21 MR. OSEN: Well, I think our plan, Your Honor,
22 would be to serve them on our original proposed date of
23 December 20th. But I think to Mr. Berger's point, we could
24 have sort of an outside date of January 17th, which is their
25 date, which means that we would probably serve earlier, but

1 their time to respond would be the same.

2 THE COURT: Which date do you want, sir?

3 MR. OSEN: So I think the latest date would be
4 January 17th.

5 THE COURT: We'll style that as initial RFPs to be
6 served by the Defendants [sic] no later than 1/17/22.

7 Obviously you can serve it before then if you're ready to do
8 so.

9 And with that, we can pick up with the Defendant's
10 schedule and direct that the parties can serve objections and
11 responses to the initial RFPs two months thereafter. So
12 that's March 18th. And the parties will then have a month to
13 do their meet and confer to discuss any objections to those
14 RFPs by April 18th.

15 And then the parties --

16 MR. OSEN: I'm sorry, Your Honor. If I could just
17 be heard for a moment on that because I think --

18 THE COURT: Just for clarity, is this --

19 MR. OSEN: Yes. I'm sorry.

20 THE COURT: -- Mr. Berger? Go ahead.

21 MR. OSEN: No. This is Mr. Osen. I'm sorry, Your
22 Honor.

23 THE COURT: Mr. Osen. Okay.

24 MR. OSEN: One of the things that we objected to in
25 our discussions is the sort of elongation of the schedule on

1 meet and confer process. They'll have had at least two
2 months and probably longer to consider the RFPs we provide.
3 And given that they're not going to be producing the records
4 but merely raising their objections at this point, we think
5 that two weeks is more than reasonable for the meet and
6 confer process before filing the briefs.

7 THE COURT: I see. So your concern is about the
8 April 18th date?

9 MR. OSEN: Correct.

10 THE COURT: Mr. Berger, do you have -- I mean, my
11 concern, Mr. Osen, is that there's 22 people on this call and
12 that conferring with any group of 22 people can take a
13 lengthy period of time.

14 Mr. Berger, what is your thoughts on the deadline
15 for the meet and confer?

16 MR. BERGER: Your Honor stole my best point, which
17 is, look, we have tried. We, the seven law firms
18 representing 11 Defendants here have tried our best to stay
19 coordinated and not to quintuplicate I say only because I
20 don't know what the number is for seven the amount of effort
21 for Mr. Osen.

22 But I mean, it takes us a while to coordinate and
23 come up with positions. And the premise that not only can we
24 do this quickly because we're only going to object is also
25 wrong. We have a due diligence obligation once we receive

1 these requests to go back and figure out what there is so
2 that we're not raising objections in the abstract. It will
3 take 30 days. It took over 30 days to get through the 26(f)
4 process and come back on these requests. I don't think it's
5 unreasonable. But any number Your Honor picks we will comply
6 with.

7 THE COURT: So Mr. Osen, I hear you. And I think
8 that being Plaintiffs in this case you're a little more
9 nimble than the Defendants. No offense to any individual
10 defense attorneys, of course. I'm sure you're all very
11 nimble in your lives. But in this context, this is not a
12 nimble process for this group of Defendants.

13 So I do credit Mr. Berger's concern that he needs
14 more time than two weeks to confer with this large of a group
15 to both review the requests, sort of figure out what their
16 positions are, and then to communicate those positions to
17 you, meet and confer on it. I do predict that period of time
18 is going to take some time. And I'd rather build a schedule
19 that we can live with and to avoid the parties needing to
20 engage in 17 emails back-and-forth just simply to request a
21 two-week extension, which is of no use to anybody. That's
22 just an unnecessary burden.

23 So I am going to go ahead with the Defendants'
24 proposal that that gap be a one-month gap. The parties have
25 been --

1 MR. OSEN: Your Honor.

2 THE COURT: Yes?

3 MR. OSEN: If I may for just one moment. I'm not
4 going to reargue the April 18th date. Just want to point out
5 that the period here is not for the Defendants to confer.
6 They'll have 60 or more days to do that internally.

7 THE COURT: I understand.

8 MR. OSEN: It's to schedule a single call with us.
9 And again, I am not rearguing the April 18th date. But I
10 just want the Court to be mindful that in the course of this
11 process -- and again, Mr. Berger mentioned the Linde case.
12 We had 10 years of litigation relating to bank secrecy,
13 including a trip to the U.S. Supreme Court. So we're very
14 mindful of the fact that our clients are the families of
15 fallen soldiers and also horrifically injured veterans who
16 are obviously eager to see the case as expedited as this
17 complex process allows.

18 So having said my piece, I recognize the April 18th
19 deadline and will act accordingly.

20 THE COURT: And I do appreciate everything you're
21 saying, Mr. Osen. And I certainly in no way would like to
22 think this schedule is any disservice to your clients. My
23 issue simply is one of case management and trying to figure
24 out a schedule that is realistic based on the knowledge that
25 it takes time for banks to move. And it takes time for

1 voluminous records to be reviewed.

2 I'd be surprised if each of these banks are even in
3 a position to confer with one another in less than 30 days
4 after receiving your RFPs. And I don't think it's a one
5 phone call meet and confer here, sir. I think it's going to
6 probably be more than that because the, you know, complexity
7 of the issues here is going to be significant. And you are
8 also potentially going to be in the midst of processing
9 substantial records in response to your third-party
10 subpoenas.

11 So really, all I'm trying to do here is build a
12 case schedule that I think is realistic. And I appreciate
13 your optimism that this -- you can hammer out your meet and
14 confer in one meeting. I am less confident about that. And,
15 you know, I do want to underscore that my individual rules,
16 which I'm not -- I will waive for the purposes of this
17 particular motion, you know, require -- because this is a
18 different order of discovery motion than most -- you know,
19 require the parties to meet and confer and narrow as much as
20 they possibly can prior to coming to the court, you know, on
21 these motions to compel and motions for protective orders.

22 And I really strongly encourage the parties to do
23 that here. And it may take more than one call, Mr. Osen.
24 And so you should all be prepared to do that.

25 So moving along, the parties' next proposed date,

1 original schedule, Plaintiffs had suggested that the motions
2 to compel be filed in late March. We're obviously past that
3 at this point.

4 So going back to the Defendants' proposal, the
5 motions to compel or for protective order, suggested
6 submission date is May 2nd.

7 And then the Defendants' schedule gives a month to
8 respond. The Plaintiffs' schedule also gave a month to
9 respond followed by a couple of weeks. It looks like three
10 weeks on each of the schedules following that.

11 So Mr. Osen, understanding everything you just said
12 and taking it to heart, I am going to respectfully direct the
13 rest of the Defendants' proposed schedule. May 2nd for the
14 parties' motion to compel or for protective order. And then
15 the oppositions to discovery motion to be due June 2nd.
16 Replies to be due June 23rd.

17 Okay. And then with regard to this issue
18 around -- about the back part, the back half that Mr. Berger
19 explained in detail, I am not going to set a deadline for the
20 parties -- for the Defendants to tell us the exact position
21 they're going to be taking 90 days after any issuance of
22 letters rogatory. I'm going to leave that question open.
23 And we'll get to the issues pertaining to the scheduling of
24 that when there is a ruling, if there is such a ruling. You
25 know, permitting the letters rogatory and seeing what all of

1 that -- seeing where everything ends up.

2 So I'm going to not rule on the latter two
3 categories for now. And I will just advise the parties that
4 my inclination would be to give the Defendants a deadline by
5 which to provide a status report or an update but not a
6 deadline as to exactly what's happening with the, you know,
7 foreign banks because I know that that's a complex process.
8 So we can revisit that question when and if there's, you
9 know, more clarity about what's happening with regard to all
10 of that.

11 So Mr. Osen, with that, is there anything further
12 that the Court can take up today?

13 MR. OSEN: Yes. Just one item, Your Honor, because
14 we talked about the sort of front end of the schedule and the
15 briefing. One thing that we have found in multiple prior
16 cases, including the Linde case Mr. Berger cited is the
17 Defendants providing in advance -- and sometimes to the court
18 as well, sometimes just to the plaintiffs -- the particular
19 sections of the applicable law, in this case Lebanon, that
20 they think are implicated once they see the RFPs so that the
21 parties are sort of aware of the parameters of what is going
22 to be in dispute, if anything.

23 So for example, some jurisdictions permit
24 disclosure if there is a client waiver. Others do not. Some
25 have distinctions they draw between nationals of the country

1 and accounts held by foreign nationals. So there are
2 distinctions which obviously would be unique to Lebanon. And
3 so we would ask -- I don't know that it needs to be so
4 ordered, but we would like to know well in advance of our
5 meet and confer in April what laws and the Lebanese code the
6 Defendants are going to rely upon with respect to the RFPs
7 once they've received them.

8 THE COURT: Mr. Berger, what are your thoughts on
9 that reply?

10 MR. BERGER: Yes, Your Honor. Look, I think I
11 speak for every defense firm on this call, which is it's not
12 our approach to things to give Plaintiffs less information
13 than we would give the Court. I'm sure Your Honor would
14 insist of that in litigating these issues we'd be as specific
15 as possible.

16 Having not seen his requests, we don't know what
17 laws will be implicated. We will, of course, have to take
18 advice from Lebanese lawyers on that issue. And even if we
19 get it right in our view, in our responses, that's not to say
20 that the Lebanese Central Bank or the Commission, Special
21 Investigative Commission of Lebanon won't have other
22 provisions that we haven't thought about.

23 So we'll do our very best to be specific about the
24 provisions of Lebanese law. We don't think we would be
25 credible to Your Honor if we just say, you know, Lebanese law

1 in general prohibits us from producing. We will have to be
2 as specific as we can be.

3 THE COURT: See, what I think he's actually asking
4 is for there to be some sort of understanding or perhaps even
5 build it into the schedule that to the extent you're able to
6 provide the citations or the translated copies of the law or
7 whatever it is that he's seeking, that you'll be providing
8 that in advance of the meet and confer so that the meet and
9 confer can be productive.

10 Is that a fair summary of what you're asking for,
11 Mr. Osen?

12 MR. OSEN: Yes, Your Honor.

13 THE COURT: So I think that's really the question,
14 Mr. Berger.

15 MR. BERGER: And that seems entirely fair, Your
16 Honor. And of course, we're dependent on Lebanese lawyers to
17 give us that advice and those copies, et cetera. But there's
18 no reason for us to want to evade that. We want fulsome
19 objections if we have to make them and we want a productive
20 meet and confer.

21 THE COURT: Very good. So what I will do then in
22 the minute entry and order that I will enter today setting
23 these dates and deadlines is just a, you know, directive to
24 the Defendants that you're being respectfully directed to
25 provide the relevant citations and, to the extent available,

1 the Lebanese authority on which you plan to rely in support
2 of any objections in advance of the meet and confer.

3 And I'm not going to set a deadline for it. You
4 guys can work that out on your own. But I will respectfully
5 direct the Defendants to do that. I think it's a good idea,
6 Mr. Osen, in terms of having the meet and confer be
7 productive so that you're all, you know, reasonably informed
8 about the lay of the land as you go into the conversation.

9 So with that, is there anything else? Mr. Osen?

10 MR. OSEN: Nothing further, Your Honor.

11 THE COURT: Okay. Mr. Berger, how about from you?

12 MR. BERGER: Nothing further, Your Honor.

13 THE COURT: Ms. Goldstein?

14 MS. GOLDSTEIN: Nothing further, Your Honor.

15 THE COURT: All right. Is there any other
16 Defendant who would like to add anything or has any
17 questions, clarification?

18 Okay. Well, again want to thank you all for
19 coordinating as much as you have in advance of this call.
20 Your prep is very clear to me. And I also appreciate that
21 you did your best vis-a-vis one another in trying to resolve
22 and narrow these disputes. And I appreciated the joint
23 submission summarizing the respective positions of both
24 parties.

25 I, you know, do understand the complexities here

1 and hope to help keep this case moving along at a reasonable
2 pace, although I recognize that the Linde case gives us some
3 sense of how long it could go on for.

4 So with that, I think we are adjourned. I hope you
5 all have a nice holiday season to the extent you're able to
6 take any time off. I hope you enjoy it, and I hope you all
7 stay safe.

8 (Proceedings adjourned at 11:43 am)

9
10 TRANSCRIBER'S CERTIFICATE

11 I certify that the foregoing is a correct
12 transcript from the electronic sound recording of the
13 proceedings in the above-entitled matter.

14
15 December 17, 2021

16 *Carrie Clouse*

17 _____
18 Carrie Clouse, CET-1207

DATE

19 Legal Transcriber
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